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(b) Difference of opinion, § 3.105(b) of this chapter.

(Authority: 38 U.S.C. 511; Pub. L. 98-525)

§ 21.7305 Conflicting interests.

In administering benefits payable under 38 U.S.C. chapter 30, VA will apply the provisions of § 21.4005.

(Authority: 38 U.S.C. 3034, 3036)

[62 FR 55761, Oct. 28, 1997]

§ 21.7307 Examination of records.

In administering benefits payable under 38 U.S.C. chapter 30, VA will apply the provisions of § 21.4209.

(Authority: 38 U.S.C. 3034, 3690)

[62 FR 55761, Oct. 28, 1997]

§ 21.7310 Civil rights.

(a) *Delegation of authority concerning Federal equal opportunity laws.* The Under Secretary for Benefits is delegated the responsibility to obtain evidence of voluntary compliance with Federal equal opportunity laws from educational institutions and from recognized national organizations whose representatives are afforded space and office facilities under his or her jurisdiction. See part 18 of this chapter. These equal opportunity laws are:

(1) Title VI, Civil Rights Act of 1964;

(2) Title IX, Education Amendments of 1972, as amended;

(3) Section 504, Rehabilitation Act of 1973; and

(4) The Age Discrimination Act of 1975.

(b) *Role of State approving agencies.* In obtaining evidence from educational institutions of compliance with Federal equal opportunity laws, the Under Secretary for Benefits may use the State approving agencies as provided in § 21.4258(d).

(Authority: 42 U.S.C. 2000)

[62 FR 55761, Oct. 28, 1997]

§ 21.7320 Procedural protection; reduction following loss of dependent.

(a) *Notice of reduction required when a veteran loses entitlement to additional educational assistance for a dependent.* Except as provided in paragraph (b) of this section, VA will not reduce an award of educational assistance fol-

lowing the veteran's loss of a dependent unless:

(1) VA has notified the veteran of the adverse action; and

(2) VA has provided the veteran with a period of 60 days in which to submit evidence for the purpose of showing that the educational assistance should not be reduced.

(b) *No advance notice required in certain situations.* When the reduction is based solely on written, factual, unambiguous information as to dependency or marital status provided by the veteran or his or her fiduciary with knowledge or notice that the information would be used to determine the monthly rate of educational assistance allowance:

(1) VA will not send either an advance or a prereduction notice as stated in paragraph (a) of this section; but

(2) VA will send notice of the adverse action contemporaneous with the reduction in educational assistance.

(Authority: 38 U.S.C. 5112, 5113)

[58 FR 63530, Dec. 2, 1993]

Subpart L—Educational Assistance for Members of the Selected Reserve

AUTHORITY: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, unless otherwise noted.

SOURCE: 53 FR 34740, Sept. 8, 1988, unless otherwise noted.

§ 21.7500 Establishment and purpose of educational assistance program.

An educational assistance program for certain members of the Selected Reserve is established to encourage membership in the Selected Reserve of the Ready Reserve.

(Authority: 10 U.S.C. 16131(a); Pub. L. 98-525)

DEFINITIONS

§ 21.7520 Definitions.

For the purposes of regulations from § 21.7500 through § 21.7999, governing the administration and payment of educational assistance under 10 U.S.C. chapter 1606, the Selected Reserve Educational Assistance Program, the following definitions apply. (See also additional definitions in § 21.1029).

(a) *Definitions of participants*—(1) *Reservist*. The term *reservist* means a member of the Selected Reserve who is eligible for educational assistance under 10 U.S.C. chapter 1606.

(2) *Selected Reserve*. The term *Selected Reserve* means the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces of the United States, as required to be maintained under section 268(b), 10 U.S.C.

(Authority: 10 U.S.C. 16131; Pub. L. 98–525)

(b) *Other definitions*. (1) *Attendance*. The term *attendance* means the presence of a reservist—

(i) In the class where the approved course in which he or she is enrolled is taught;

(ii) At a training establishment; or

(iii) In any other place of instruction, training, or study designated by the educational institution or training establishment where the reservist is enrolled and is pursuing a program of education.

(Authority: 10 U.S.C. 2131(c)(1), 2136(b); 38 U.S.C. 3474; sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565, 2567; sec. 642, Pub. L. 101–189, 103 Stat. 1456–1458)

(2) *Audited course*. The term *audited course* has the same meaning as provided in § 1.4200(i) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(a); Pub. L. 98–525)

(3) *Deficiency course*. The term *deficiency course* means any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a post-secondary program of education.

(Authority: 10 U.S.C. 16136(b); Pub. L. 98–525)

(4) *Divisions of the school year*. The term *divisions of the school year* has the same meaning as provided in § 21.4200(b) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(a); Pub. L. 98–55)

(5) *Drop-add period*. The term *drop-add period* has the same meaning as provided in § 21.4200(l) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(a); Pub. L. 98–525)

(6) *Educational assistance*. The term *educational assistance* means the monthly payment made to members of the Selected Reserve for pursuit of a program of education.

(Authority: 10 U.S.C. 16131(b); Pub. L. 98–525)

(7) *Educational objective*. An approvable educational objective is one that leads to the awarding of an associated degree, a bachelor's degree or the equivalent.

(Authority: 10 U.S.C. 16131(b), 38 U.S.C. 3680(a); Pub. L. 98–525)

(8) *Enrollment*. The term *enrollment* means the state of being on that roll or file of an educational institution which contains the names of active students.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(g); Pub. L. 98–525)

(9) *Enrollment period*. The term *enrollment period* has the same meaning as provided in § 21.4200(p) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(g); Pub. L. 98–525)

(10) *In residence on a standard quarter- or semester-hour basis*. The term *in residence on a standard quarter- or semester-hour basis* has the same meaning as provided in § 21.4200(r) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3688(c); Pub. L. 98–525)

(11) *Independent study*. The term *independent study* has the same meaning as provided in § 21.4267(b) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3688(c); Pub. L. 98–525)

(12) *Independent study-resident training*. The term *independent study-resident training* means:

(i) The state of being enrolled concurrently in one or more undergraduate courses or subjects offered by independent study as defined in paragraph (b)(11) of this section and one or more courses or subjects offered by

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resident training as defined by paragraph (b)(22) of this section, or

(ii) The state of being enrolled in one or more undergraduate level subjects which

(A) Do not meet the requirements of either paragraphs (b)(22)(i), (b)(22)(ii) or (b)(22)(iii) of this section,

(B) Have some weeks when standard class sessions are scheduled, and

(C) Consist of independent study as defined in paragraph (b)(11) of this section during those weeks when there are no regularly scheduled standard class sessions.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3688(c); Pub. L. 98-525)

(13) *Institution of higher learning.* The term *institution of higher learning* means

(i) A college, university or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree, if the educational institution is empowered by the appropriate State education authority under State law to grant an associate or higher degree.

(ii) When there is no state law to authorize the granting of a degree, an educational institution which

(A) Is accredited for degree programs by a recognized accrediting agency, or

(B) Is a recognized candidate for accreditation as a degree-granting school by one of the national or regional accrediting associations and has been licensed or chartered by the appropriate State authority as a degree-granting institution.

(iii) A hospital offering educational programs at the postsecondary level without regard to whether the hospital grants a postsecondary degree.

(iv) An educational institution which

(A) Is not located in a State,

(B) Offers a course leading to a standard college degree or the equivalent, and

(C) Is recognized as an institution of higher learning by the secretary of education (or comparable official) of the country in which the educational institution is located.

(Authority: 10 U.S.C. 16131; Pub. L. 98-525)

(14) *Mitigating circumstances.*

(i) Mitigating circumstances are circumstances beyond the reservist's control which prevent him or her from continuously pursuing a program of education. The following circumstances are representative of those which VA considers to be mitigating. This list is not all-inclusive.

(A) An illness of the reservist;

(B) An illness or death in the reservist's family;

(C) An unavoidable change in the reservist's conditions of employment;

(D) An unavoidable geographical transfer resulting from the reservist's employment;

(E) Immediate family or financial obligations beyond the control of the reservist which require him or her to suspend pursuit of the program of education to obtain employment;

(F) Discontinuance of the course by the educational institution;

(G) Unanticipated active duty for training; and

(H) Unanticipated difficulties in providing for child care for the reservist's child or children.

(ii) If a reservist withdraws from a course during a drop-add period, VA will consider the circumstances which caused the withdrawal to be mitigating.

(iii) In the first instance of a withdrawal after May 31, 1989, from a course or course for which the reservist received educational assistance under chapter 1606, title 10, U.S. Code, VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent. In determining whether a withdrawal is the first instance of withdrawal, VA will not consider courses dropped during an educational institution's drop-add period as provided in paragraph (b)(14)(ii) of this section.

(Authority: 38 U.S.C. 3034, 3680(a)(1); Pub. L. 100-689) (June 1, 1989)

(15) *Nonpunitive grade.* The term *nonpunitive grade* has the same meaning as provided in §21.4200(j) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(a); Pub. L. 98-525)

(16) *Normal commuting distance.* The term *normal commuting distance* has the

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same meaning as provided in § 21.4200(m) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680; Pub. L. 98-525)

(17) *Program of education.* A program of education—

(i) Is any unit course or subject or combination of unit courses or subjects pursued by a reservist at an educational institution, required by the Administrator of the Small Business Administration as a condition to obtaining financial assistance under the provisions of 15 U.S.C. 636; or

(ii) Is a combination of subjects or unit courses pursued at an educational institution, which combination is generally accepted as necessary to meet requirements for a predetermined educational, professional, or vocational objective. It may consist of subjects or courses which fulfill requirements for more than one objective if all objectives pursued are generally recognized as being related to a single career field; and

(iii) Includes an approved full-time program of apprenticeship or of other on-job training.

(Authority: 10 U.S.C. 2131; 38 U.S.C. 3452(b); sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565, 2567; secs. 642(a), (b), (d), 645, Pub. L. 101-189, 103 Stat. 1456-1458)

(18) *Punitive grade.* The term *punitive grade* has the same meaning provided in § 21.4200(k) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(a); Pub. L. 98-525)

(19) *Pursuit.*

(i) The term *pursuit* means work, while enrolled, toward the objective of a program of education. This work must be in accordance with approved institutional policy and regulations, and with applicable criteria of 10 U.S.C. and 38 U.S.C.; must be necessary to reach the program's objective; and must be accomplished through—

(A) Resident courses;

(B) Independent study;

(C) Correspondence courses;

(D) An apprenticeship or other on-job training program; or

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(E) Flight courses.

(Authority: 10 U.S.C. 2131, 2136; 38 U.S.C. 3680(g); sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565, 2567; secs. 642, 645, Pub. L. 101-189, 103 Stat. 1456-1458)

(ii) VA will consider a reservist who qualifies for payment during an interval, school closing, or holiday vacation to be in pursuit of a program of education during the interval, school closing, or holiday vacation.

(Authority: 10 U.S.C. 2136(b); 38 U.S.C. 3680(g); sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565, 2567; sec. 642(c), (d), Pub. L. 101-189, 103 Stat. 1457-1458)

(20) *Refresher course.* The term *refresher course* means either:

(i) A course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed; or

(ii) A course which permits an individual to update knowledge and skills or be instructed in the technological advances which have occurred in the reservist's field of employment since his or her entry on active duty and which is necessary to enable the individual to pursue an approved program of education.

(Authority: 10 U.S.C. 2131(b), (c); sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565; secs. 642(a), (b), (d), 645(a), (b), Pub. L. 101-189, 103 Stat. 1456-1458))

(21) *Remedial course.* The term *remedial course* means a course designed to overcome a deficiency at the elementary or secondary level in a particular area of study, or a handicap, such as in speech.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3491(a)(2); Pub. L. 98-525)

(22) *Resident training.* The term *resident training* means—

(i) A course or subject, leading to a standard college degree, offered in residence on a standard quarter- or semester-hour basis;

(ii) A course of subject leading to a standard college degree at the undergraduate level which requires regularly scheduled, weekly classroom or laboratory sessions but does not require them in sufficient number to meet the provision of paragraph (23)(i) of this section,

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(iii) A course or subject leading to standard college degree at the undergraduate level which

(A) Would qualify as a course under paragraph (b)(22)(i) of this section except that it does not have weekly class instruction,

(B) Requires pursuit of standard class sessions for each credit at a rate not less frequent than every 2 weeks,

(C) Requires monthly pursuit of a total number of standard class sessions which, during the month, is required by a course meeting the provisions of paragraph (b)(22)(i) of this section,

(D) Is considered by the institution offering it as fully equivalent to a course described in paragraph (b)(22)(i) of this section including payment of tuition and fees; the awarding of academic credit for the purpose of meeting graduation requirements; and the transfer of credits to a course meeting the provision of paragraph (b)(22)(i) of this section, and

(E) Together with all other similar courses offered by the institution of higher learning, has an enrollment representing less than 50 percent of persons at that institution receiving educational assistance under either chapter 31, 32, 34, 35 or 36 of title 38 U.S.C.,

(iv) The hospital or fieldwork phase of a course with the objective of registered professional nurse or registered nurses, including a course leading to a degree in nursing when—

(A) The hospital or fieldwork phase of the course is an integral part of the course,

(B) The completion of the hospital or fieldwork course is a prerequisite to the successful completion of the course,

(C) The student remains enrolled in the institution of higher learning during the hospital or fieldwork phase, and

(D) The training is under the direct supervision of the institution of higher learning.

(v) The clinical training portion of a course leading to the objective of practical nurse, practical trained nurse, or licensed practical nurse when—

(A) The clinical training is offered by an affiliated or cooperating hospital,

(B) The student is enrolled in and supervised by the institution of higher

learning during the clinical training, and

(C) The course is accredited by a nationally recognized accrediting agency or meets the requirements of the licensing body of the State in which the institution of higher learning is located.

(vi) An off-campus job experience included in a course offered by an institution of higher learning is resident training only if the course is—

(A) Accredited by a nationally recognized accrediting agency or is offered by a school that is accredited by one of the regional accrediting agencies;

(B) A part of the approved curriculum of the institution of higher learning;

(C) Directly supervised by the institution of higher learning;

(D) Measured in the same unit as other courses;

(E) Required for graduation; and

(F) Has a planned program of activities described in the institution of higher learning's official publication which is approved by the State approving agency and which is institutional in nature as distinguished from training on-the-job. The description shall include at least a unit subject description; a provision for an assigned instructor; a statement that the planned program of activities is controlled by the institution of higher learning, not by the officials of the job establishment; a requirement that class attendance on at least a weekly basis be regularly scheduled to provide for interaction between instructor and student; a statement that appropriate assignments are required for completion of the course; a grading system similar to the system used for other resident subjects offered by the institution of higher learning; and a schedule of time required for the training which demonstrates that the student shall spend at least as much time in preparation and training as is normally required by the institution of higher learning for its other resident courses.

(vii) A course including student teaching, or

(viii) A flight training course when included as a creditable part of an undergraduate course leading to a standard college degree.

(Authority: 10 U.S.C. 16131(b); Pub. L. 98–525)

(23) *School, educational institution, institution.* The terms *school, educational institution, and institution* mean:

(i) A vocational school or business school;

(ii) A junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution;

(iii) A public or private elementary school or secondary school which offers courses for adults, provided that the courses lead to an objective other than an elementary school diploma, a high school diploma, or their equivalents; or

(iv) Any entity, other than an institution of higher learning, that provides training required for completion of a State-approved alternative teacher certification program.

(Authority: 10 U.S.C. 16131(a), (c); 38 U.S.C. 3002, 3452)

(24) *School year.* The term *school year* means generally a period of 2 semesters or 3 quarters which is not less than 30 nor more than 39 weeks in total length.

(Authority: 10 U.S.C. 16136(b); Pub. L. 98–525)

(25) *Standard class session.* The term *standard class session* has the same meaning as provided in § 21.4200(g) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3688(c); Pub. L. 98–525)

(26) *Standard college degree.* The term *standard college degree* has the same meaning as provided in § 21.4200(e) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3688; Pub. L. 98–525)

(27) *State.* The term *State* has the same meaning as provided in § 21.1021(c) of this part.

(Authority: 38 U.S.C. 101(20); Pub. L. 98–525)

(28) *Vocational or professional objective.* A vocational or professional objective is one that leads to an occupation. It may include educational objectives es-

sential to prepare for the chosen occupation, but not include any educational objectives beyond the bachelor's degree. When a program of education consists of series of courses not leading to an educational objective, these courses must be pursued at an institution of higher learning and must be required for attainment of a designated vocational or professional objective.

(Authority: 10 U.S.C. 16131(b); Pub. L. 98–525)

(29) *Disabling effects of chronic alcoholism.*

(i) The term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case,—

(A) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(B) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(ii) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(iii) Injury sustained by a reservist as a proximate and immediate result of activity undertaken by the reservist while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 3031(d); Pub. L. 100–689) (Nov. 18, 1988)

(30) *Cooperative course.* The term *cooperative course* means a full-time program of education which consists of institutional courses and alternate phases of training in a business or industrial establishment with the training in the business or industrial establishment being strictly supplemental to the institutional portion.

(Authority: 10 U.S.C. 2131(e); 38 U.S.C. 3686; sec. 642(b), (d), Pub. L. 101–189, 103 Stat. 1456–1458)

(31) *Established charge.* The term *established charge* means the lesser of—

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(i) The charge for the correspondence course or courses determined on the basis of the lowest extended time payment plan offered by the educational institution and approved by the appropriate State approving agency; or

(ii) The actual charge to the reservist.

(Authority: 10 U.S.C. 2131(f); sec. 642(b), (d), Pub. L. 101-189, 103 Stat. 1456-1458)

(32) *Training establishment.* The term *training establishment* means any establishment providing apprentice or other on-job training, including those under the supervision of a college, university, any State department of education, any State apprenticeship agency, any State board of vocational education, any joint apprenticeship committee, the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. chapter 4C, or any agency of the Federal government authorized to supervise such training.

(Authority: 10 U.S.C. 2131(d), 16136(b); 38 U.S.C. 3452(e); sec. 642(b), (d), Pub. L. 101-189, 103 Stat. 1456-1458)

(33) *Continuously enrolled.* The term *continuously enrolled* means being in an enrolled status at an educational institution for each day during the ordinary school year, and for consecutive school years. Consequently, continuity of enrollment is not broken by holiday vacations, vacation periods, periods during the school year between terms, quarters, or semesters, or by nonenrollment during periods of enrollment outside the ordinary school year (e.g., summer sessions).

(Authority: 10 U.S.C. 16136(b))

(34) *Persian Gulf War.* The term “Persian Gulf War” means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(Authority: 38 U.S.C. 101(33))

(35) *Alternative teacher certification program.* The term *alternative teacher certification program*, for the purposes of determining whether an entity offering such a program is a school, educational institution, or institution as defined in paragraph (b)(23)(iv) of this section,

means a program leading to a teacher’s certificate that allows individuals with a bachelor’s degree or graduate degree to obtain teacher certification without enrolling in an institution of higher learning.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3452(c))

[53 FR 34740, Sept. 8, 1988, as amended at 57 FR 57105, Dec. 3, 1992; 58 FR 51782, Oct. 5, 1993; 61 FR 20729, May 8, 1996; 61 FR 29300, June 10, 1996; 64 FR 23773, May 4, 1999; 65 FR 5788, Feb. 7, 2000]

CLAIMS AND APPLICATIONS

§ 21.7530 Applications, claims, and time limits.

The provisions of subpart B of this part apply with respect to claims for educational assistance under 10 U.S.C. chapter 1606, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3472)

[64 FR 23773, May 4, 1999]

ELIGIBILITY

§ 21.7540 Eligibility for educational assistance.

(a) *Basic eligibility requirements.* The Armed Forces will determine whether a reservist is eligible to receive benefits pursuant to 10 U.S.C. chapter 1606 (or 10 U.S.C. chapter 106 as in effect before December 1, 1994). To be eligible a reservist—

(1) Shall:

(i) Enlist, reenlist, or extend an enlistment as a Reserve for service in the Selected Reserve so that the total period of obligated service is at least six years from the date of such enlistment, reenlistment, or extension; or

(ii) Be appointed as, or be serving as, a reserve officer and agree to serve in the Selected Reserve for a period of not less than six years in addition to any other period of obligated service in the Selected Reserve to which the person may be subject;

(2) Must complete his or her initial period of active duty for training;

(3) Must be participating satisfactorily in the Selected Reserve; and

(4) Must not have elected to have his or her service in the Selected Reserve credited toward establishing eligibility